

The position receipt As a Proof of Land Sale and Purchase in the Conception of Legal Certainty

Billy Arisa^{*)}

^{*)} Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, E-mail: billariza12@gmail.com

Abstract. *This study aims to examine and analyze the position receipt As evidence of buying and selling land in the conception of legal certainty. To analyze legal consequences receiptsale and purchase of land in the concept of legal certainty. The research approach method used in this thesis is an empirical juridical legal research method and the nature of this research is analytical descriptive. Data collection was carried out through a literature study in order to obtain secondary data, whether in the form of primary legal materials, secondary legal materials, or tertiary legal materials. To support the research that has been done, field research was also carried out in order to obtain primary data that supports secondary data. The technical analysis used in this study is a qualitative analysis technique. The research results show that the fulfillment of the elements of sale and purchase (agreement) as contained in Article 1320 of the Civil Code in conjunction with Article 1457 of the Civil Code. Even though buying and selling underhand is legal based on the principle of freedom of contract and the existence of an agreement between the parties, it cannot be said to be valid in managing the registration process for the transfer of names because there are several administrative requirements that have not been met, namely formal requirements and to obtain the transfer of land rights and transfer of names. must have a deed drawn up by PPAT because the transfer of land rights through buying and selling land must be proven by a deed drawn up by PPAT. Because of law inside receiptsale and purchase of land rights carried out privately, if a dispute arises between the seller and the buyer, the private deed can still be refuted and only has perfect evidentiary strength if it is acknowledged by both parties, or strengthened by other evidence. Therefore, it is said that the deed under the hand is the beginning of written evidence and if you want to transfer the name, the parties, both the seller and the buyer, must make a sale and purchase deed drawn up by the PPAT as the basis for transferring the name at the BPN office.*

Keywords: Evidence; Purchase; Sale.

1. Introduction

The State of Indonesia is a constitutional state, this provision is contained in the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia), in Article 1 paragraph (3). The Indonesian state at this time always attaches importance to national development. National Development is an effort carried out by all components of the nation in order to achieve state goals. Central and Regional levels¹.

National development is not only in the government system, but also includes the country's economic development. Things that are done by the government in creating a just, prosperous and prosperous society, when seen in Pancasila and the 1945 Constitution of the Republic of Indonesia, namely those who have carried out development in all fields continuously or for generations in this national development.

According to Article 1 number 3 of Act No. 25 of 2004 it states that "The National Development Planning System is a unified procedure for development planning to produce long-term, medium-term and annual development plans carried out by elements of state administration and society in Central and Regional levels". The purpose of this development is to meet the needs of the people in that country. One example of the most important necessities of life is the economy. As a legal state, Indonesia has an obligation to protect all Indonesian people, including regulating the benefits of all aspects of life in order to be able to provide prosperity for all Indonesian people. Indonesia's legal state is based on the concept of a welfare state, which aims to maximize the prosperity of the people. This is a constitutional mandate in Article 33 paragraph (3) which states that, "earth, water and the natural resources contained therein are controlled by the state for the greatest prosperity of the people".

The aim of the welfare state is to guarantee the rights of citizens in today's modern era, depending on the availability of natural resources. The condition of the availability of natural resources is a determining factor in fulfilling the basic rights of citizens

One of the most important natural resources in ensuring prosperity in the Indonesian legal state in the current era of globalization is land. The existence of land is an important natural resource for the Indonesian state, which is regulated in Act No. 5 of 1960 concerning Basic Agrarian Regulations (UUPA), in Article 1 paragraph (1) states that, "all land within the territory of the Indonesian State is the common land of all the people of Indonesia".

¹Article 1 point 2 and 3 of Act No. 25 of 2004 concerning the National Development Planning System

The scope in agrarian terms, land is part of the earth, which is called the surface of the earth. The land referred to here does not regulate land in all its aspects, but here regulates one of its aspects, namely land in a juridical sense is called rights. Land as part of the earth is stated in Article 4 paragraph (1) of the UUPA, namely "On the basis of the right to control from the State as referred to in Article 2 it is determined that there are various kinds of rights over the surface of the earth, called land, which can be given to and owned by people, both alone and together with other people and legal entities"² and all land rights have material characteristics (zakelijk characters), namely: (1) can be transferred and transferred to other parties, (2) can be used as collateral for a debt, and (3) can be encumbered with mortgage rights.

Land is one of the primary human needs for means of shelter and carrying out various aspects of activities, humans cannot be separated from land, because with land humans can carry out development or carry out the economy such as investing in stocks, both from an agricultural aspect and other shophouse construction. In national development, the role of land for fulfilling various needs will increase, both for residential purposes and for business activities. As a capital asset, land has grown as a very important economic object, not only as a trading material but also as an object of speculation. On the one hand, land must be used and used as much as possible for the welfare and prosperity of the people, and on the other hand, its sustainability must be maintained.³

In accordance with the current developments, the development of human life cannot be separated from land, land is an important part of human survival. In addition to land as a place to live, land is also a place to seek fortune, in the Big Indonesian Dictionary, land is the top layer of the earth, the condition of the earth in a place, the surface of the earth that is given boundaries, and materials from the earth such as sand, rock, marl and so on.⁴Land is very closely related to human life. Everyone certainly needs land, not only in his life, even for death humans still need a piece of land. The amount of land that can be controlled by humans is very limited, while the number of people who desire land is always increasing. In addition to the increasing number of people who need land for housing, economic, social, cultural and technological progress and development also requires the availability of a lot of land, for example for plantations, livestock, factories, offices, entertainment venues and roads for transportation facilities. Therefore, the longer it is felt as if the land is getting narrower, while the demand is always increasing. So do not be surprised if the value of land so

²Urip santoso, 2012, Registration and Transfer of Land Rights, Kencana. Jakarta, p.10.

³Achmad Rubaie, 2017, Law of Land Acquisition for Public Interest, Bayumedia, Malang, p. 1.

⁴Boedi Harsono, 2012, Indonesian Agrarian Law, Association of Land Law Regulations, Bridge Publishers, Jakarta, p.18

high. The imbalance between the supply of land and the need for land has created various problems with many facets. Currently, land acquisition can be obtained in several ways, namely by applying for rights, transferring rights.

In our society, the acquisition of land rights is more often done by transferring rights, namely through buying and selling. Transfer of rights/transfer of rights, is a legal act aimed at transferring rights, including: Buying and selling, grants, swaps, separation and distribution of joint assets and income within a company or inbreng. The word buying and selling in the everyday sense can be interpreted, where someone releases money to get the desired item voluntarily.

According to Boedi Harsono, "In Customary Law the act of transferring rights (buying and selling, grants, exchange) is a legal act in cash." Sale and purchase in land law with the payment of the price at the same time in cash. Then according to Law (BW) Article 1457 it is stated that the sale and purchase of land is an agreement in which the seller binds himself (meaning promises) to hand over the rights to the land in question to the buyer who binds himself to pay the seller the agreed price.⁵ The provisions stipulated in the entire Book II of the Civil Code have been revoked and are no longer valid.

On September 24, 1960 the Basic Agrarian Regulations were published in State Gazette Number 104, 1960, which is better known as the Basic Agrarian Law (UUPA). With the UUPA, "dualism" will disappear and a legal unit (Unification) in the field of Agrarian Law will be created in our country.

Since the enactment of the UUPA, the meaning of buying and selling land is no longer an agreement as in Article 1457 jo 1458 of the Indonesian Civil Code, but a legal act of transferring rights forever in cash and then further regulated in the Implementing Regulations of the UUPA, namely PP No. 10 of 1961 which was amended by Government Regulation Number 24 of 1997, concerning Land Registration, which stipulates that the sale and purchase of land must be evidenced by a deed drawn up by and before the Land Deed Making Officer (PPAT), as stated in Article 37 paragraph (1) PP No. 24/1997 which reads:

"Transfers of land rights and ownership rights to apartment units through buying and selling, bartering, grants, entering company data and legal actions for transferring rights due to auctions can only be registered if proven by a deed drawn up by the authorized PPAT according to the provisions of the law. – applicable invitation"⁶

⁵Ibid., p. 52.

⁶Boedi Harsono, Indonesian Agrarian Law, ...Op..Cit p. 538–539.

So the sale and purchase of land rights must be carried out before the Land Deed Making Officer (PPAT). This is evidence that there has been a sale and purchase of a land right and then the Land Deed Making Officer (PPAT) makes the Sale and Purchase Deed which is then followed by registration at the local Land Office according to the location of the land. But it cannot be denied, in people's daily lives there is still a lot of buying and selling of land between sellers and buyers which is carried out underhand not in the presence of the Land Deed Making Officer (PPAT). Agrarian jo Article 37 paragraph (1) Government Regulation Number 24 of 1997 concerning Land Registration. receiptis a proof of receipt of money. Buying and selling land privately is sometimes only evidenced by a sheetreceiptas evidence that a sale has taken place.

The activity of buying and selling land rights is proven without a sale and purchase deed made before the PPAT, which is proven only by a sheetreceipto course this legal action for the buyer will be very detrimental, because the buyer does not get legal certainty regarding the transfer of rights to the land he bought, even though he has paid a sum of money to the seller. Normatively, the certificate has been purchased but does not yet have evidence of the transfer of rights over the land in question and the certificate is still in the name of the seller, even though it has been handed over to the buyer.

In everyday life so many problems that arise inland matters. Land disputes are a classic problem, they are always everywhere on earth and both in quality and quantity are always increasing due to the fixed land area, while the number of people who need land to meet their needs continues to grow. One of the land disputes is buying and selling which is carried out under the hands without a sale and purchase deed as an authentic deed.

Buying and selling land without proof of ownership in the form of a land certificate is a complicated problem that often becomes a source of conflict in our society. There are those who carry out land buying and selling transactions based on an oral agreement between the seller and the buyer. There are even people who are desperate to sell the land they have sold, in the term of their village, selling over selling. Later, a problem arose, the legality of the land being sold or purchased was sued. Some are then resolved by deliberation or kinship, some are brought to court, some are taken by way of shortcuts, disputes or disputes. Buying and selling land is a process of transferring land rights that have existed since ancient times, and are regulated in customary law, with the principles of "bright" and "cash." Bright means that it is carried out in the presence of an authorized public official. Cash means land is paid in cash.

Based on the description above, the problem is the placement of land without rights, as happened in the case of land located in Wanajaya Village, Kasokandel District, Majalengka Regency, which is occupied by the Buyer, even though the

land is legally formally owned by the Buyer, because the Certificate of Ownership of the land cannot be processed back on behalf of the Buyer.

This case began in 2021 where there was a sale and purchase of land rights belonging to Mr. Enan Uman to Mr. Hendi Suhendi which was carried out underhand, namely using only proof of purchase with receipt in the end the whereabouts of the seller are not known until the waiver of rights is submitted to the Buyer for the Sale and Purchase Authorization to be carried out

In this case, Mr. Hendi Suhendi has paid IDR 875,500,000, - as in the proof of the letter receipt July 15, 2021 according to what had been agreed upon by Enan Uman, after that it was informed to local officials such as the Head of the RT, Head of RW, and Kelurahan and Enan Uman had handed over the Certificate of Ownership and other important documents to Hendi Suhendi but due to the negligence of the buyer The certificate of ownership is lost and the name transfer process has not been carried out. After that, Enan Uman's whereabouts are still unknown. Therefore Hendi Suhendi filed for compensation through the Enan Uman family

2. Research Methods

The research approach method used in this thesis is an empirical juridical research method. Empirical juridical research is research that seeks to relate the legal norms that apply to the reality in society. This approach seeks to find a theory regarding the process of occurrence and the working process of law. The specification of this research uses descriptive analysis, namely research that describes the applicable laws and regulations associated with positive legal theories concerning the problems being studied.⁷ Source of data comes from primary data and secondary data. Data collection methods include interviews, document studies or library materials. The data analysis method used in analyzing the data is a qualitative analysis technique

3. Results and Discussion

3.1. The Position receipt As a Proof of Land Sale and Purchase in the Conception of Legal Certainty

Referring to the concept of evidence, the position of receipts is included in written evidence as Article 164 HIR/284 R.Bg and Article 1866 of the Civil Code, which are in the form of underhanded letters made intentionally for a statement of intent. This underhand letter has the power of proof if there is no denial from one of the parties. It would be nice for the parties to buy and sell land with a

⁷Rony Hanitijo Soemitro, 2013. *Legal and Jurimetric Research Methodology*. Ghalia Indonesia, Jakarta. p. 11.

receipt accompanied by a written agreement or also strengthen their position by buying and selling land before the PPAT, so that the legal action has an authentic deed for the purpose of transferring rights and land registration. Because an authentic deed is binding evidence that will be considered true and trusted by the judge if a dispute occurs in the future⁸

Receipt as proof of receipt of money issued by the parties who will seek the material truth of the receipt so that it can be used as evidence. Receipts are made privately by the parties as written evidence (private letter) for the sale and purchase of land as initial evidence. If the proof only has proof of receipt of the sale and purchase then the position is not strong enough, therefore other evidence such as witnesses is added to strengthen the receipt as evidence in the implementation of the land sale and purchase carried out by the parties.⁹

Satjipto Rahardjo in his book entitled *Legal Studies* says that a legal protection can be interpreted as providing protection for Human Rights (HAM) that are harmed by other parties, and the purpose of legal protection is to give people a sense of comfort and security to enjoy all their rights granted by law.¹⁰

The theory put forward by Satjipto Rahardjo can also be interpreted that legal protection is something that protects legal subjects from harmful things done by other legal subjects.

According to Satjipto Raharjo, "The law protects a person's interests allocating a power to him to act in the framework of his interests."¹¹ "The allocation of this power is carried out in a measurable manner, in a sense, it is determined by its breadth and depth." "That kind of power is called rights. However, not every power in society is usually referred to as a right, but only certain powers are the reasons for attaching that right to someone.

This theory of legal protection is used to analyze the problems that have been formulated in the first problem, namely due to position receipt As evidence of buying and selling land in the conception of legal certainty. A legal protection should be obtained by all legal subjects without any differences. As stated in one of the articles in the 1945 Constitution, namely Article 27 paragraph (1) which states: "Every person has the right to recognition, guarantees, protection and fair legal certainty and equal treatment before the law."

When analyzed with the theory of legal protection put forward by Satjipto Raharjo, even though the sale and purchase is carried out underhanded, this cannot be a cause or a problem for the buyer, especially in the ownership of land rights obtained from the sale and purchase. on land that was carried out under

⁸Irza Legista, Position of Receipt as Evidence in the Sale and Purchase of Land at the Rengat Class II District Court, JOM Faculty of Law Volume VIII Number 2 July-December 2021, p. 9, <https://jom.unri.ac.id/index.php/JOMFHUKUM/article/download/31877/30682>, accessed on 18/07/2022. At 15.30 WIB

⁹Ibid., p. 10

¹⁰Satjipto Rahardjo, 2000, *Law Studies*,Op.Cit, p.54

¹¹Satjipto Rahardjo, 2003, *Other Sides of Law in Indonesia*, Kompas, Jakarta, p. 121

the hand has made and stated that there had indeed been a legal action between the two parties, namely between the seller and the buyer, and even though it was only under the hand, this was also a means of proof regulated in the Civil Code, especially in Article 1866, where one of the evidence is written evidence (written), this is further strengthened in Article 1874 of the Civil Code which states that one of the written evidence also includes a private letter that has been signed or has been affixed with a thumbprint by the parties interested in the agreement.

The theory of legal protection put forward by Satjipto Rahardjo, if it is related to problems that occur in the field, then the law protects the buyer if one day a dispute arises over the sale and purchase of the land, because even though it is made underhand, the sale and purchase agreement already fulfills the terms of the agreement and the principle of the agreement regulated in civil law, where an agreement will be binding and become law for the parties who have made the agreement (*asapacta sun servanda*), so that the agreement can become evidence, even though it has the power evidence is limited to strong, not perfect.¹²

3.2. Because of law receipt Buying and selling land in the concept of legal certainty

The legal consequences of the buyer for the sale and purchase of Land Rights are carried out underhand, if a dispute arises between the seller and the buyer, the private deed can still be refuted and only has perfect evidentiary power if it is acknowledged by both parties, or strengthened again with other evidence. Therefore, it is said that the deed under the hand is the beginning of written evidence

Receipt is a private evidence whose proof is only formal, not perfect like an authentic deed where the proof is formal and material. However, these receipts can become valid and have legal force if the signatures listed on the receipts are directly acknowledged by the parties involved. Receipts that are used as evidence in court must be stamped because in order to be used as evidence the receipt must meet administrative requirements, namely paying off the stamp duty owed if the receipt is not stamped. This is in accordance with Article 1 letter (a) of Act No. 13 of 1985 concerning Stamp Duty which states that agreements and other letters are made with the aim of being used as a means of proof regarding acts, facts or circumstances that are civil in nature, is subject to Stamp Duty as a document tax, even though the statement letter will still be valid even

¹²Fajar Adhitya Nugroho, Sihabudin, Hariyanto Susilo, Legal Protection for Buyers Against Sale and Purchase of Land Rights that are Underhanded (Case Study in Malang City) p 20 <https://media.neliti.com/media/publications/119416-ID-perlindungan-Hukum-bagi-pembeli-terhadap.pdf>, accessed on 19/07/2022. At 06.30 WIB.

if it is not stamped because in fact all agreements made by anyone legally apply as law for those who make them. This land right according to the provisions of Article 19 Paragraph (1) of the UUPA is strong evidence regarding the annihilation of ownership rights and the validity of the transfer of said land. That is, the evidence of receipts here is very vulnerable to being legal evidence in buying and selling land, especially if the land object in question occurs in a dispute in the future by a third party. Even though basically the proof of receipt in the sale and purchase of land does not mean it is invalid, it is still valid if the sale and purchase is carried out in accordance with applicable regulations.

4. Conclusion

Proof of receipt in land sale and purchase transactions still valid, because the element of sale and purchase (agreement) as contained in Article 1320 of the Civil Code Jo Article 1457 of the Civil Code has been fulfilled. Even though buying and selling underhand is legal based on the principle of freedom of contract and the existence of an agreement between the parties, it cannot be said to be valid in managing the registration process for the transfer of names because there are several administrative requirements that have not been met, namely formal requirements and to obtain the transfer of land rights and transfer of names. must have a deed drawn up by PPAT because the transfer of land rights through buying and selling land must be proven by a deed drawn up by PPAT. Because of law inside receipts sale and purchase of land rights carried out privately, if a dispute arises between the seller and the buyer, the private deed can still be refuted and only has perfect evidentiary strength if it is acknowledged by both parties, or strengthened by other evidence. Therefore, it is said that the deed under the hand is the beginning of written evidence and if you want to transfer the name, the parties, both the seller and the buyer, must make a sale and purchase deed drawn up by the PPAT as the basis for transferring the name at the BPN office.

5. References

- [1] Achmad Rubaie, 2017, *Hukum Pengadaan Tanah Untuk Kepentingan Umum*, Bayumedia, Malang.
- [2] Boedi Harsono, 2012, *Hukum Agraria Indonesia, Himpunan Peraturan-Peraturan Hukum Tanah*, Penerbit djembatan, Jakarta.
- [3] Fajar Adhitya Nugroho, Sihabudin, Hariyanto Susilo, *Perlindungan Hukum Bagi Pembeli Terhadap Jual Beli Hak Atas Tanah Yang Dilakukan Secara Di Bawah Tangan (Studi kasus di Kota Malang)* h 20 <https://media.neliti.com/media/publications/119416-ID-perlindungan-hukum-bagi-pembeli-terhadap.pdf>, accessed on 19/07/2022. at 06.30 WIB.

- [4] Irza Legista, *Kedudukan Kwitansi Sebagai Alat Bukti Dalam Jual Beli Tanah Di Pengadilan Negeri Rengat Kelas Ii*, JOM Fakultas Hukum Volume VIII Nomor 2 Juli-Desember 2021 Page 9, <https://jom.unri.ac.id/index.php/JOMFHUKUM/article/download/31877/30682>, accessed on 18/07/2022. at 15.30 WIB
- [5] Rony Hanitijo Soemitro, 2013. *Metodologi Penelitian Hukum dan Jurimetri*. Ghalia Indonesia Jakarta.
- [6] Satjipto Rahardjo, 2003, *Sisi-Sisi Lain dari Hukum di Indonesia*, Kompas, Jakarta.
- [7] Septiawan Syaifin Nuha, Henny Juliani, Nabitatus Saadah, *Implementasi Peraturan Daerah Nomor 11 Tahun 2014 Tentang Pengelolaan Keuangan Dan Aset Desa Dalam Mewujudkan Pembangunan Desa Pada Desa Punjulharjo Kecamatan Rembang Kabupaten Rembang*, Diponegoro Law Journal Volume 6, Nomor 1, 2017, Accessed on 11/03/2022. at 19.50 WIB
- [8] Urip santoso, 2012, *Pendaftaran dan Peralihan Hak atas Tanah*, Kencana. Jakarta.